

Approved For Release 2004/03/11 : CIA-RDP85-00988R000300010086-5

1. Whether CIA should have the authority to conduct "counterterrorism activities" in addition to collecting and analyzing "counterterrorism intelligence."

a. term "counterterrorism activities" appears in "Statement of Purposes," p. 2, Title IV, §402(4).

b. "counterterrorism activity" defined in Title I, §104(7) (A), (B) and (C).

c. §413(e)(1) - CIA given duty to "conduct ... counterterrorism activities outside the U.S."

d. §413(e)(2) - CIA given duty to "conduct counterterrorism activities within the U.S." with the caveat that they be "... integrally related to counterintelligence or counterterrorism activities of the Agency outside the U.S."

e. §413(f) - CIA given coordination role for all counterterrorism activities conducted outside the U.S. by any other entity of the Intelligence Community.

2. §411(a): Whether there is a substantive difference between the use of the phrase "... under the direction and control of the National Security Council" appearing in the second sentence of this subsection and the way the National Security Act of 1947 addresses the same matter.

Note - §102(a) of the National Security Act of 1947, as amended, reads in pertinent part: "There is established under the National Security Council a CIA..." (emphasis added).

3. Whether the term "proprietary," as defined in this title, is sufficient to cover partnerships, corporations and other businesses whose relationship to CIA is publicly known.

Note: a. The definition as written does not take into account situations such as the Air America situation, where the relationship between the CIA and Air America has not been officially acknowledged but is unofficially commonly known.

✓ b. Suggest that the definition be revised to read in pertinent part: "...but whose relationship with the CIA has not been publicly acknowledged by the U.S. Government."

4. Whether the DNI and the DCI are one and the same persons [§412(a)].

Note: This subsection is confusing in that it nowhere explicitly or clearly states that the DNI heads the CIA. Instead, as written and in particular with its reference to §117 (Title I) entitled "Authority of the President to Transfer Certain Duties and Authorities of the Director of National Intelligence" to which CIA has objected on numerous occasions, it

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appears that the DNI and DCI roles can be split. The SSCI staff made clear that this in fact is the intent of the subsection and that it reflects some degree of congressional concern that the DNI and the D/CIA (DCI) be split. The staff also indicated that instead of tackling the ticklish issue head on, it was decided to throw the ball into the President's court by including §117. The SSCI staff has emphasized that §117 represents a "political compromise."

5. Whether the DCI may exercise inherent delegable powers [§412(a)].

Note: This issue focuses on the lack of clarity as to whether the DCI may exercise an inherent delegable power, for instance, to delegate his duties to the DDNI or to any ADNI. This is nowhere clearly stated in §412 and is even more confused due to the reference in this section to §117.

6. Whether the phrase "willing voluntarily" as used in §413(b)(1) and (2) is unnecessarily redundant and susceptible to being misconstrued because of what appears to be an overemphasis through the use of an unnecessarily "reinforced" phrase [§413(b)(1)].

Note: a. In previous discussions on this point with SSCI staff, CIA was told that the reinforcing term "voluntarily" was included after "willing" to cover and prevent situations wherein coercion or duress may be employed which otherwise would not be reached if the term "willing" alone were used.

b. Query: are there situations where coercion, threat or duress may be necessary to elicit the foreign intelligence and without which the collection effort would be thwarted? In this regard, note that the coercion, threat or duress need not always be to physical safety.

c. §1-801 of E.O. 12036 might be substituted for all of subsection (b) as more appropriate. E.O. 12036 does not differentiate between publicly available/nonpublicly available foreign intelligence or collection within or without U.S. boundaries. §1-801 reads in pertinent part:

"1-801. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collect national [foreign] intelligence..."

7. Whether the standard "... when integrally and exclusively related to Agency activities outside the U.S. ..." is an impractical/impossible standard by which to measure clandestine collection of non-publicly available foreign intelligence from foreign persons within the U.S. [§413(b)(2)].

Note: a. The particular concern here is with the adverbial modifiers "integrally and exclusively."

b. Query: how defined; how much of a nexus must be established; and who decides that sufficient nexus with Agency activities outside U.S. is present?

c. The standard in part is repeated in §413(e)(2), line 3, "integrally related to ..."

8. Whether the Congress should be treated in statute as coequal recipient of the intelligence product along with the Executive Branch. [§413(c)].

9. Whether the language or construction used is proper statutory language or style, e.g., "The Agency shall act as the DNI's agent..." [§413(f)].

Note: If CIA's argument that DNI should be the same person as the D/CIA is accepted, following language is suggested:

"The DNI, as head of the CIA, shall coordinate all..."

or

"The Agency shall, under the direction and control of the DNI, be responsible for the coordination of all collection outside the U.S. of foreign intelligence, counterintelligence, and counterterrorism activities by clandestine means including collection utilizing human sources."

10. Whether §413(a)(2), lines 2-3, should be consistent with E.O. 12036, which reads:

"§1-809. Conduct services of common concern for the Intelligence Community as directed by the NSC;" (emphasis added)

Note: The preamble to the 1-8 series of subsections in Executive Order 12036 emphasizes the NSC direction. In that regard §1-8 reads in pertinent part:

"...As authorized by the NSA of 1947, as amended, the CIA Act of 1949, as amended, and other laws and directives, the CIA, under the direction of the NSC, shall: ..." (emphasis added).

11. Whether the Agency should be given the duty not only to "conduct liaison with foreign governmental agencies" but also to coordinate all such liaison conducted by other entities of the Intelligence Community [§413(g)(3)].

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Note: a. Suggest that §413(g)(3) be changed to read:

"... conduct liaison with foreign governmental agencies in coordination with the Director of National Intelligence and coordinate all such liaison conducted by other entities of the Intelligence Community"

or

"... conduct liaison with foreign governmental agencies in coordination with the Director of National Intelligence and, in accordance with the provisions of the Act, carry out those responsibilities given the Director of National Intelligence to coordinate all such liaison"

b. CIA raised this issue with the SSCI staff, and the response was that the State Department considered itself as having equity in this liaison process and therefore wanted some role in it, i.e., that the Agency should not itself be granted the coordination role. See also in this regard §114(j), Title I.

12. Whether the phrase "Office of the Director" should be defined [§413(g)(5)].

Note: a. This is the first reference to "Office of the Director" in Title IV. The "Office of the Director of National Intelligence" is established under §113(a) of Title I. See also in this regard the definition of Intelligence Community [§104(16), Title I] which lists the Office of the Director as a separate entity within the Intelligence Community [§104(16)(A)].

b. The relationship between the Director, the Agency and the Office of the DNI is unclear. See §113 of Title I in this regard where it is stated that the DNI heads the Office of the Director with no mention of its link to or relationship with the CIA.

c. Ambiguity surrounding role of the Office of the Director is reinforced by the potential split of the DNI and the D/CIA.

13. Whether the CIA should be explicitly charged with support of the "Office of the Director of National Intelligence" (ODNI) [§413(g)(5)] and if so, whether the categories of support specifically listed in subsection (g)(5) are sufficient to meet the needs of the ODNI.

Note: See paragraph 4 of this memorandum and §412(a).

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14. Whether "[a]ll Agency activities within the United States involving the collection of intelligence and all Agency counterintelligence and counterterrorism activities within the U.S." should be required to be conducted "in coordination with the Federal Bureau of Investigation and in accordance with procedures agreed upon by the Attorney General and the Director of National Intelligence" (emphasis added) [§413(h)(1)].

Note: a. §413(h)(1) sets up a dual requirement of coordination with the FBI and compliance with procedures agreed upon by the AG and DNI.

b. It is suggested that §1-801 of Executive Order 12036 dealing with the same issue is drafted more precisely and substantively is preferable to the dual requirement established by §413(h)(1). §1-801 of the Executive Order reads in pertinent part:

"...The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General."

15. §413(h)(2): Whether the annual review called for in this subsection "of all Agency activities within the U.S. for the purpose of ensuring that such activities do not violate any right protected by the Constitution or laws of the United States" (emphasis added) is not unnecessarily redundant since, on the one hand, the Director is already charged with reviewing intelligence activities "on a continuing basis" [§114(c)], and on the other hand, the Intelligence Oversight Board [§151] effectively fulfills the same role.

16. Whether the following language contained in §1-812 of Executive Order 12036 should be included at end of §413 as a new subsection 413(i):

"Conduct such administrative and technical support activities within and outside the U.S. as are necessary to perform the functions described in §413 above, including procurement and essential cover and proprietary arrangements."

17. Whether the phrase in lines 8-12 of §421(a)(1), "...but only when the Director certifies in writing that such limitation would unduly impede the performance of a function authorized by this title and transmits such written certification to the appropriate committees of Congress," is administratively burdensome and unnecessary.

18. Whether provision also should be made for background investigations to be conducted for the following categories of individuals not currently covered under §412(a)(6): employees; contractors; and employees of contractors.

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Note: §412(a)(6) makes provision for the Agency to "conduct background investigations of applicants for employment with the Agency" (emphasis added).

19. Whether the services listed in §412(a)(8) are sufficient to cover all generic categories of services performed by the Agency "[i] carrying out its functions under this [bill]"

Note: a. §412(a)(8) as currently written authorizes the Agency to "perform inspection, audit, public affairs, legal and legislative services."

b. Query: What about budgetary and personnel services, for example?

20. Whether provision should be made to authorize the Agency to pay "association and library dues."

Note: a. Provision could be made for the Agency to pay "association and library dues" by inserting words to that effect in §412(a)(16) or a new subsection (18) could be inserted.

b. §8(a)(1) of the CIA Act of 1949, as amended (50 U.S.C.A. 403j(a)(1)) makes provision for the Agency to expend funds for payment of "association and library dues."

21. Whether the Agency should have authority to dispose of property and use the proceeds therefrom to purchase new property.

Note: a. There is no provision in the bill granting this authority.

b. It is suggested that a new subsection §421(a)(18) be drafted. Words to the following effect are suggested:

"Dispose of property and use the proceeds therefrom to purchase new property notwithstanding the provisions of [cite relevant law] when the Director deems such action necessary to the successful performance of the functions of the Agency or to protect the security of Agency activities."

d. §421(d)(1) will have to be appropriately revised.

22. Whether the choice of the term "normal" in §421(d)(1) is either appropriate, given the true nature of the cover proprietary, or necessary from a good drafting point of view.

23. Whether the "Agency budget" should be included in §421(g) in the list of items which cannot be disclosed via the mechanism of construing any other provision of law to require such.

24. Whether the authority for employees to carry firearms as described in §421(i) is sufficiently broad to cover all Agency needs in this arena.

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Note: a. Query: Does the term "courier protection purposes" encompass "safeguarding confidential documents or materials," those being transported and those not in the process of being transported, and does the "courier protecting purposes" term extend to information concerning intelligence sources and methods?

b. While §421(h) arguably provides authority for the security officers policing installations and grounds of the Agency to carry firearms, would it not be better to explicitly state this in §421(i). Specific language might take the form of:

"Agency personnel, designated by the DCI and qualified for the use of firearms would be authorized to carry firearms within the U.S. to protect facilities, properties, monies and other valuable assets owned and utilized by the Agency..."

c. Query: Whether an attempt should be made to define "exigent circumstances" as it appears in lines 5-6 of this subsection.

d. Query: Does the subsection extend to the "transportation and utilization of firearms for authorized training"?

e. Keep in mind the Agency's firearms proposal submitted to OMB, independent of the charter legislation.

25. Whether the language contained in §421(j)(1) and (j)(2) sufficiently meets Agency needs as provided for in current law.

26. Whether the procurement authority provided in §422 of the bill sufficiently covers all procurement authority currently provided under §§3 and 8 of the CIA Act of 1949, as amended.

27. Whether the reference to §139 via the phrase in §422(c) "...only in accordance with section 139 of this Act..." would hamper certain types of procurements.

Note: §139 of Title I, "Restrictions on Contracting" would allow concealment of Agency involvement if a determination is made, pursuant to procedures approved by the AG, that "such concealment is necessary to maintain essential cover or proprietary arrangements for intelligence purposes authorized by this Act."

28. §423(2):

Note: a. The phrase in subsection (2), "... and under exigent circumstances, expert personnel ..." is new as of the 9 February bill.

b. The phrase "exigent circumstances" is undefined.

29. Whether the term "request" used in line 5 of §423(4) and line 5 of §423(5) is appropriate in an authorization section.

Note: Subsections (4) and (5) provide no affirmative duty that the other agencies mentioned therein support the Agency's needs. It would not seem inappropriate to provide, instead of the present language, that when the Agency makes the requisite finding, it shall notify the INS or the IRS, as the case may be, and shall obtain, subject to approval by the Attorney General, the waiver of otherwise applicable rules and procedures or a tax audit conducted so as to avoid public disclosure.

30. Whether the term "lawful" in line 3 of §425(a) is necessary.

Note: The negative implication of this term is that the Agency is involved in unlawful activities.

31. Whether the Agency should be authorized to expend sums for activities of an extraordinary or emergency nature subject to DNI advance approval [§425].

Note: a. In that regard the following language is submitted to be inserted after the word "the" in line 32, deleting the phrase "lawful functions of the Agency." The first sentence of subsection (a) would then read (inserted portion underlined):

"Notwithstanding any other provision of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out the functions authorized by this Act and for activities of an extraordinary or emergency nature, not otherwise authorized by this Act, when such expenditures are approved in advance by the Director of National Intelligence pursuant to the authority in section 122(c) of this Act."

The additional language gives the Director necessary authority to expend funds for activities of an extraordinary or emergency nature.

b. The 2 February 1978 SSCI Draft Title I contained in §122(c) language re expenditures for "activities of an extraordinary or emergency nature." That subsection in toto has been deleted. While §122(b) of the 9 February 1978 Title I may arguably pick up the substance of the deleted subsection (c), the phrase "expenditures for activities of extraordinary or emergency nature" nowhere specifically appears in the 9 February 1978 §122. Similarly, subsection (b) of §425, it might be argued, captures the "expenditures for activities of an extraordinary or emergency nature" category, but once again that terminology nowhere specifically appears in §425(b). If this in fact is the intent of these subsections, this should be brought out in the hearings and in the report for the record, viz. the legislative history, so as to record the intent of Congress to capture in §122(b) and §425(b) the authority to expend for activities of an extraordinary or emergency nature. CIA should, however, stress the need for specific language to that effect.

32. Whether the reporting requirement contained in the second sentence of §425(b) requires reporting by both the DNI and D/CIA assuming the potential split of the two directors may become law.

Note: It is suggested that the following language be adopted and inserted in a separate subsection to replace the second sentence of §425(b):

"All expenditures made under the authority of this subsection shall be reported by the Director on a quarterly basis to the Committees on Appropriations of the Senate and the House of Representatives, and to the Select Committee on Intelligence of the Senate."

33. Whether the approval by OMB of "the proposed expenditure" as well as the "withdrawal" of funds from the Reserve Fund may be misconstrued to mean disclosure to OMB of the facts and circumstances of the proposed expenditure [§425(c)(1)(A)].

Note: If it is the intent of the drafters to cover by the phrase "the proposed expenditure" the mere fact of expenditure, then the language used is unclear.

34. Whether the phrase "facts and circumstances" in §425(c)(1)(B) requires more than just the reporting of the fact of withdrawal and the fact of the proposed expenditure.

35. Whether the appointment of the General Counsel in §426(a) should be subject to the advice and consent of the Senate, thereby potentially politicizing the position.

36. Whether the General Counsel should be responsible for and have authority to "review all activities" not only of the CIA but also the Office of the Director of National Intelligence, which is established as a separate entity in §113(a) of Title I [§426(a)(1)].

Note: The same comment applies to the responsibility and authority of the Inspector General in §426(b)(1) which should read, "... investigate all activities of the Agency and the Office of the Director of National Intelligence..." with corresponding appropriate changes made in the remainder of the subsection.

37. Regarding §431(a), which establishes penalties for improper participation in the disposition of proprietaries, the reference to §139(a) in line 8 of the cited 18 U.S.C. §207(d) is incorrect; the "waiver" referred to is described in §138(a) of Title I, not §139.

38. Whether the list of items in lines 6 through 7 of the new 18 U.S.C. 716 cited under §431(b)(1) is sufficient to cover Agency needs to prevent unlawful use of "the name 'Central Intelligence Agency', the initials 'CIA', the seal of the Central Intelligence Agency, or any colorable imitation of such name, initials or seal..."

39. With regard to the new 18 U.S.C. §2392(a) entitled "Unauthorized disclosure of identity of secret agents" in §431(c)(1), which makes an element of the crime the resultant injury to or jeopardizing of the safety (or reasonable expectation thereof) of a CIA officer or employee, whether the phrase "in a manner which results in injury to or jeopardizes the safety of such officer or employee of the CIA, or could reasonably have been expected to result in injury to or jeopardize the safety of such officer or employee of the CIA" should be amended so as to require only the knowing communication, furnishing, or disclosure of the identity of an undercover CIA officer or employee to complete the offense.

Note: In the alternative the following language change (underlined) could be proposed:

"... in a manner which results in injury to or seriously jeopardizes the safety or usefulness to the Agency of such officer or employee, or could reasonably have been expected to result in injury or jeopardize the safety or usefulness to the Agency of such officer or employee, shall be fined..."

40. Whether the reference in line 1 of §432(b) to "no police... powers" is fully consistent with §421(h) which grants to the Director the authority to "appoint and assign security officers to police the installations and grounds of the Agency..."

Note: The legislative history of the Act should clarify this issue.

41. Whether the definition of the term "employee" is responsive to Agency needs [§441(a)(1)].

Note: On previous occasions CIA stressed two alternative definitions:

a. "employee means an employee in or under an agency and more specifically defined by regulations prescribed by the Director" (this definition tracks 5 U.S.C. §5921(3)), or

b. delete the phrase "specifically indicated" in line 3 of this subsection and insert the phrase "...designated as an employee by the Director or by a properly designated official of the Agency..."

42. Whether §441(b)(1) and (b)(2) as written are sufficiently clear with regard to the fact that CIA employees assigned within and without the U.S. boundaries should receive allowances comparable with other U.S. Government employees similarly situated.

Note: The following changes are suggested.

a. §441(b)(1)(B) should read: "... allowances comparable to those provided for in chapter 59 of title 5, United States Code."

b. §441(b)(2) should read:

"with respect to employees assigned to duty stations in any foreign area, the Agency may provide allowances comparable to those provided for in chapter 59 of title 5, United States Code, allowances and other benefits as are provided employees of the Foreign Service under title IX of the Foreign Service Act of 1946 (22 U.S.C. §1131 et seq.) and death gratuities as are provided employees of the Foreign Service under section 14 of the Act entitled "An Act to provide certain basic authority for the Department of State," approved August 1, 1956 (22 U.S.C. §2679a)."

43. Whether the 60-day period required under §441(c)(3) before the expiration of which any executive order issued pursuant to §441(c)(1) may not become effective is unnecessarily burdensome.

44. Whether there is sufficient authority to cover the Agency's need to pay special allowances including quarters, cost-of-living representation allowances and travel expenses in situations where special circumstances exist as determined by the Director [§441(d)(1)].

Note: For example, expenses in certain areas of the world where other Government agencies do not have cost-of-living differentials or for expenses incurred in those cases where CIA personnel cannot get into Department of State special quarters.

45. Whether the inclusion of this section in all its detail needlessly resurrects the CIARDS issue [§442].

Note: Mere reference in the statute to the Director's statutory authority to continue to designate persons in CIARDS per 78 Stat. 1043 would suffice; the appropriate place would be in the section listing the Director's authority.